IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/11/2005

C O R A M:

THE HONOURABLE Mr.JUSTICE P.SATHASIVAM
A N D
THE HONOURABLE Mr.JUSTICE S.K.KRISHNAN

Writ Petition No.19934 of 2002
a n d
W.P.M.P.No.27519 of 2002
a n d
W.V.M.P.No.498 of 2003

1. State of Tamil Nadu
rep. by the Secretary to Government
Home Department
Fort St. George
Chennai 9.

2. The Inspector General of Prisons
Chennai 8.

3. The Deputy Inspector General
of Prisons, Chennai 8.

4. The Superintendent
Central Prison, Cuddalore. ... Petitioners

Vs

1. T. Muniraj Naidu

2. The Registrar
Tamil Nadu Administrative Tribunal
Chennai 600 104. ... Respondents.

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Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari, as stated therein.

For petitioners ... Mr.D.Krishna Kumar
Spl. Government Pleader

For respondents ... Mr.R.Gandhi, Sr. Counsel
for Mr.M.Kamalanathan
for R.1.

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O R D E R

S.K.KRISHNAN,J.

The writ petition is filed by the petitioner seeking to issue a writ of certiorari to call for the records of the Tamil Nadu Administrative Tribunal, the second respondent herein, pertaining to the orders made in O.A.No.4861 of 1996 dated 21/8/2001 and to quash the same.

2. In the affidavit filed in support of the writ petition, the petitioners had stated that the orders of the Tamil Nadu Administrative Tribunal dated 21/8/2001 in O.A.No.4861/1996, wherein the Tamil Nadu Administrative Tribunal had set aside the punishment of "Removal from service" imposed on the first respondent, with directions to reinstate him in service with all service and monetary benefits.

3. The case of the petitioners is that the first respondent was working as Warder Grade-II in Prison Department attached to Sub-jail, Tindivanam from 1/9/1977. While he was serving as Warder Grade-II at Sub-jail, Tindivanam, he was entrusted to attend duty on 31/10/1984, between 10.00 p.m. and 12.00 mid night. On 31/10/1984 around 11.00 p.m., when the Sub-jail Superintendent inspected the jail, he did not find the first respondent at the place where he was assigned to attend the duty. However, he found the first respondent sleeping in front of the steps of the Court hall under the influence of some giddiness, thereby he was issued a charge memo on 28/11/1984 by the Superintendent, Sub-jail, Tindivanam.

4. The gist of the charges is as follows:-

> "You are working in Sub-jail, Tindivanam and serving in the Prison Department for the past seven years. You are duty bound to observe the rules and regulations. On 31/10/1984 night at 10 - 12 p.m., you were allotted treasury para duty. During your duty time you have placed the musket in the Superintendent's table and sleeping in the doorsteps of the Court after drinking. During night rounds by the Sub-jail Superintendent, you have been found in the doorstep's of Court and even after sprinkling water in your face you are unable to stand due to intoxication. Thus during para duty time you have slept outside the Prison and the musket belonging to Govt. with pouch was placed in the Superintendent's table without any responsibility

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and thus failed in his duties and therefore, this charge."

5. After the conclusion of the enquiry, the enquiry authorities found him guilty of the charges proved and on the basis of the said finding, disciplinary authorities finally passed an order terminating the first respondent from the service on 21/3/1991 and the same was confirmed by the Government Order in G.O.Ms.No.116 (Home) dated 27/3/1992. As against the said dismissal order passed by the authorities, the first respondent preferred O.A.No.4861 of 1996 before the Tamil Nadu Administrative Tribunal and the Tribunal, after considering the relevant materials and also considering the relevant connected documents related to the findings, allowed the said petition in favour of the first respondent. Aggrieved against the said order passed by the Tamil Nadu Administrative Tribunal, the State of Tamil Nadu, represented by the Secretary to the Government, Home Department, preferred this writ petition under Article 226 of the Constitution of India with a prayer to call for the records of the Tamil Nadu Administrative Tribunal, the second respondent herein, pertaining to the orders made in O.A.No.4861 of 1996 dated 21/8/2001 and to quash the same.

6. It is an admitted fact that the first respondent was facing disciplinary proceedings from 4/12/1984 till he was removed from service on 27/3/1992. Thereafter, he approached the Tamil Nadu Administrative Tribunal for necessary relief. It is relevant here to refer to the relief granted by the Tamil Nadu Administrative Tribunal, which reads as follows:-

> "Therefore, we are of the view that the applicant is entitled to succeed. The application is allowed and entire disciplinary proceeding including the final orders passed by the respondents 1 to 4 are set aside. The applicant shall be reinstated in service with all service and monetary benefits."

7. For quashing the said order passed by the Tamil Nadu State Administrative Tribunal, the learned counsel appearing for the petitioners would emphasise on the following points.

The Tribunal, while considering the case of the first respondent, miserably failed to note that the first respondent being a person in an uniformed disciplinary force and also to take care of the prisoners lodged, to watch them, to avoid, escape of the prisoners or any untoward incident that may happen in prisons and they are expected to be vigil in a night duty. Whereas, the first respondent who was away from the place where he was expected to attend the duty in a particular place, slept during particular hour in an abnormal circumstances, which is considered to be a grave

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misconduct. Without considering this aspect and misconduct committed by the first respondent being a person in an uniformed service, the Tribunal has come to an erroneous conclusion and held that the harassment itself (facing enquiry by the first respondent before the disciplinary authorities for a long time) would be a sufficient punishment for the delinquency, is not at all a reasonable one and the same is liable to be set aside.

8. Per contra, learned counsel appearing for the first respondent, would vehemently contend that without any sufficient evidence and materials available against him, the disciplinary authority passed the order of removal from service. However, the Tribunal after analysing the entire circumstances, arrived at a reasonable conclusion to set aside the said order. Further, the learned counsel, would state that after analysing the harassment meted out to the first respondent in the pretext of conducting the disciplinary proceedings for a long time, which is considered as a harassment to the first respondent and thereby concluded a correct decision, by setting aside the order of dismissal by the authorities.

9. Further, while deciding the matter, the Tribunal was of the view that the power of remittance has been abused by the authorities in an arbitrary manner and hence, the learned counsel pointed out that no interference is needed by this Court to quash the order passed by the Tamil Nadu Administrative Tribunal.

10. In this regard, Mr.D.Krishna Kumar, learned Special Government Pleader would contend that eventhough the Tribunal passed an order to reinstate the first respondent in service, the first respondent is not at all entitled to receive full backwages during the relevant period.

11. It is pointed out by learned counsel that when considering the misconduct committed by the first respondent and the same was duty proved before the authorities, the disciplinary authorities passed the dismissal order is a reasonable one. In that circumstances, the punishment of dismissal cannot be termed unduly harsh or disproportionate.

12. In support of his contention, the learned counsel relied on the following decisions for consideration.

13. With regard to the first reason emphasised by the learned counsel, the following decision is relied on.

In M.P.ELECTRICITY BOARD Vs. JAGDISH CHANDRA SHARMA (2005 (3) SUPREME COURT CASES 401), relied on its decision in Mahindra and Mahindra Ltd., Vs. N.B.NARAWADE (2005 (3) S.C.C. 134), wherein, the Supreme Court held as follows:

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"20. It is no doubt true that after introduction of Section 11 A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11 A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the Court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment."

14. With regard to the second point, learned counsel relied on INDIAN RAILWAY CONSTRUCTION CO. LTD Vs. AJAY KUMAR (2003 (4) SUPREME COURT CASES - 579), the Supreme Court relied on a three-Judge decision of the Supreme Court in the case of HINDUSTAN TIN WORKS (p) Ltd Vs. EMPLOYEES (1979 (2) S.C.C. 80), wherein, the Supreme Court held as follows:

"In the very nature of things there cannot be a straitjacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done according to the rules of reason and justice, according to law and not humour. It is not to be arbitrary, vague and fanciful but legal and regular (see Susannah Sharp Vs. Wakefield, AC at p.179).

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15. However with regard to the findings arrived by the authorities, the learned counsel appearing for the first respondent would submit that the discrepancies and inconsistencies found in the charge memo and in the findings are visibly exposed and the same are affecting the root of the charges. The inconsistencies found between the findings and the charge memo have been clearly discussed by the Tribunal and accordingly, the Tribunal has concluded that the awarding of punishment is something which is not found in the charge memo has been ordered and it has influenced the mind of the authority in awarding the extreme penalty of removal from service.

16. Further, the learned counsel would point out that the abuse of procedure adopted by the authorities would very much affect the mental condition of the first respondent and he had experienced such a kind of mental agony continuously from the date of receiving the charge memo till he got favourable orders from the Tribunal. It is pointed out by the counsel that the agony meted out to the first respondent in the pretext of facing enquiry before the authorities for the long time itself is a sufficient punishment for the first respondent. Accordingly, the Tribunal has taken a correct decision, ordering him to be reinstated in service. This point is also appreciated by the Tribunal in paragraph 19 which is as follows:-

> "We are of the view that the applicant has not been punished, but harassed, and the harassment meted out to him will be sufficient for the delinquency he has committed."

17. With regard to the charge memo furnished against the first respondent, it was stated that while the first respondent was on night patrol between 10.00 p.m. to 12.00 p.m., on 31/10/1984, he was not present in the place of duty, but slept somewhere else after drinking. The Sub-jail Superintendent found the first respondent in an intoxicated condition and accordingly, the above stated charge memo was furnished. It is a fact that the first respondent was found sleeping outside the place of work under the influence of drinking. The said allegation of consuming liquor by the first respondent was not proved. However, all the departmental witnesses have categorically stated that the first respondent at the relevant point of time was away from the place where he was expected to attend the night para work. Considering this aspect, the disciplinary authorities found him guilty of misconduct. When comparing the punishment awarded by the authorities with regard to the misconduct committed by the first respondent with that of the mental agony which he had experienced from the beginning of the enquiry proceedings till he got favourable orders from the Tribunal, the punishment imposed against the first respondent is disproportionate. Accordingly, the Tribunal while deciding the case, concluded that the punishment

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awarded by the disciplinary authority against the first respondent is too excessive. Accordingly, the punishment was set aside.

18. We are not in dispute about the decision arrived at by the Tamil Nadu Administrative Tribunal with regard to the passing of setting aside the order of dismissal. However, we are not in agreement with the decision awarding monetary benefits to the first respondent in the event of his reinstatement in service.

19. As per the legal principles observed in the decision reported by the learned Special Government Pleader in INDIAN RAILWAY CONSTRUCTION CO. LTD Vs. AJAY KUMAR (2003 (4) SUPREME COURT CASES - 579), while affirming the decision taken by the Tribunal in respect of the reinstatement of the first respondent, however when considering the misconduct committed by the first respondent we differ from the findings of the Tribunal in this aspect in allowing the first respondent to receive all the monetary benefits in the event of his reinstatement into service.

20. In the light of the discussions referred to above while considering the entire aspects, we modify the payment of back wages and restrict it to 50%.

21. With the above modification, the above writ petition is disposed of. No costs. Consequently, the connected W.P.M.P.No. 27519 of 2002 and W.V.M.P.No.498 of 2003 are also dismissed.

mvs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
1. The Registrar
Tamil Nadu Administrative Tribunal, Chennai 600 104.

+1 CC to M/s.Kamalanathan, Advocate, SR No.45478

TS(CO)
BG/25.11.2005

Pre-delivery order in
W.P.No.19934 of 2002

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